

THE HONORABLE MARSHA J. PECHMAN

LANE POWELL PC
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Seattle, Washington 98101-2338
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERSCOPE RECORDS, a California
general partnership; CAPITOL RECORDS,
INC., a Delaware corporation; SONY BMG
MUSIC ENTERTAINMENT, a Delaware
general partnership; ATLANTIC
RECORDING CORPORATION, a Delaware
corporation; BMG MUSIC, a New York
general partnership; and VIRGIN RECORDS
AMERICA, INC., a California corporation,

Plaintiffs,

v.

DAWNELL LEADBETTER,

Defendant.

No. CV05-1149 MJP (RSL)

MOTION FOR LEAVE TO AMEND
COMPLAINT BASED ON NEWLY
DISCOVERED EVIDENCE

Noted for Hearing:
Friday, April 7, 2006 (per LR 7(d)(2)(B))

Without Oral Argument

Plaintiffs Interscope Records, Capitol Records, Inc., SONY BMG MUSIC
ENTERTAINMENT, Atlantic Recording Corporation, BMG Music, and Virgin Records
America, Inc. (collectively, the "Plaintiffs") respectfully move this Court for an order,
pursuant to Fed. R. Civ. P. 15, granting them leave to amend their Complaint to include
Donald Leadbetter as a Defendant. In support of this Motion, Plaintiffs state as follows:

1. This action was filed by Plaintiffs seeking to recover damages and injunctive relief
against Defendant Dawnell Leadbetter for copyright infringement on or about June 21, 2005.

MOTION FOR LEAVE TO AMEND COMPLAINT
BASED ON NEWLY DISCOVERED EVIDENCE - 1

Case No. CV05-1149MJP(RSL)
707507.0014/1283550.1

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2. A Scheduling Order was issued in this action requiring that amendments of the Complaint and the addition of parties be done on or before April 5, 2006.

3. In response to Plaintiffs' written discovery, Defendant identified her son, Donald Leadbetter, as the individual who may have used an online media distribution system to download, distribute, and make available the copyrighted recordings to others without the permission or consent of Plaintiffs

4. Specifically, in response to Plaintiffs Interrogatory No. 9, Defendant Dawnell Leadbetter stated, "In 2002, defendant's son told her that he had downloaded the Kazaa Lite program onto the VPR desktop computer."

5. Accordingly, Plaintiffs seek leave to amend their Complaint to add Donald Leadbetter as a Defendant.

6. Fed. R. Civ. P. provides, in relevant part:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and the leave shall be freely given when justice so requires.

7. Here, the amendment of the Complaint and the addition of Donald Leadbetter as a defendant is timely and the interests of justice and judicial economy strongly weigh in favor of allowing Plaintiffs to amend their Complaint.

8. No party will be prejudiced by such an amendment. Trial in this case is not scheduled until October 2, 2006. Accordingly, the Defendants will have more than ample time to conduct any discovery that they deem necessary and appropriate.

MOTION FOR LEAVE TO AMEND COMPLAINT
BASED ON NEWLY DISCOVERED EVIDENCE - 2

Case No. CV05-1149MJP(RSL)
707507.0014/1233509.1

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1 9. Were this Court to deny the Plaintiffs motion for leave to amend their Complaint,
2 Plaintiffs would be forced to file yet another lawsuit, which clearly would not be in the
3 interests of either the Court or the parties, where, as here, all of the issues can be heard in one
4 forum.

5 11. For all of the foregoing reasons, the Plaintiffs respectfully submit that allowing them
6 to amend their Complaint to add Donald Leadbetter is warranted and appropriate here. A
7 copy of the First Amended Complaint is attached hereto as Exhibit 1.
8

9 WHEREFORE, Plaintiffs Interscope Records, Capitol Records, Inc., SONY BMG
10 MUSIC ENTERTAINMENT, Atlantic Recording Corporation, BMG Music, and Virgin
11 Records America, Inc. respectfully request that this Court enter an Order granting them leave
12 to amend their Complaint to add Donald Leadbetter as a Defendant and accept for filing the
13 proposed First Amended Complaint that is being filed contemporaneously herewith.
14

15
16 DATED this 29th day of March 2006:

17 LANE POWELL PC

18
19 By: S/Christian N. Oldham
Christian N. Oldham, WSBA No. 14481

20 1420 Fifth Avenue, Suite 4100
21 Seattle, Washington 98101-2338
22 Attorneys for Plaintiffs
23
24
25
26

CERTIFICATE OF SERVICE

The undersigned certifies that on the 29th day of March 2006, a true copy of the foregoing pleading was electronically filed to the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

Lory R. Lybeck, Esq.
Brian T. Hodges
Lybeck Murphy, LLP
7525 SE 24th Street, #110
Mercer Island, WA 98040
Attorneys for Defendant

S/Christian N. Oldham
Christian N. Oldham

MOTION FOR LEAVE TO AMEND COMPLAINT
BASED ON NEWLY DISCOVERED EVIDENCE - 4

Case No. CV05-1149MJP(RSL)
707507.0014/1233509.1

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EXHIBIT A

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AMERICA, INC., a California corporation,

Plaintiffs,

v.

DAWNELL LEADBETTER,

Defendant.

No. CV05-1149 MJP (RSL)

[PROPOSED]

FIRST AMENDED COMPLAINT FOR
COPYRIGHT INFRINGEMENT

JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. §101, et seq.).

2. This Court has jurisdiction under 17 U.S.C. § 101, et seq.; 28 U.S.C. §1331 (federal question); and 28 U.S.C. §1338(a) (copyright).

3. This Court has personal jurisdiction over the Defendants, and venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a), in that the Defendants

FIRST AMENDED COMPLAINT FOR
COPYRIGHT INFRINGEMENT - 1

Case No. CV05-1149 MJP (RSL)
707507.0014/1283559.1

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SEATTLE, WASHINGTON 98101-2338
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1 reside in this District, and the acts of infringement complained of herein occurred in this
2 District.

3 **PARTIES**

4 4. Plaintiff Interscope Records is a California general partnership, with its
5 principal place of business in the State of California.

6 5. Plaintiff Capitol Records, Inc. is a corporation duly organized and existing
7 under the laws of the State of Delaware, with its principal place of business in the State of
8 New York.

9 6. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general
10 partnership, with its principal place of business in the State of New York.

11 7. Plaintiff Atlantic Recording Corporation is a corporation duly organized and
12 existing under the laws of the State of Delaware, with its principal place of business in the
13 State of New York.

14 8. Plaintiff BMG Music is a general partnership duly organized and existing
15 under the laws of the State of New York, with its principal place of business in the State of
16 New York.

17 9. Plaintiff Virgin Records America, Inc. is a corporation duly organized and
18 existing under the laws of the State of California, with its principal place of business in the
19 State of New York.

20 10. Plaintiffs are informed and believe that Defendants are individuals residing in
21 this District.

22 **COUNT I**

23 **INFRINGEMENT OF COPYRIGHTS**

24 11. Plaintiffs incorporate herein by this reference each and every allegation
25 contained in each paragraph above.
26

1 12. Plaintiffs are, and at all relevant times have been, the copyright owners or
2 licensees of exclusive rights under United States copyright with respect to certain copyrighted
3 sound recordings (the "Copyrighted Recordings"). The Copyrighted Recordings include but
4 are not limited to each of the copyrighted sound recordings identified in Exhibit A attached
5 hereto, each of which is the subject of a valid Certificate of Copyright Registration issued by
6 the Register of Copyrights. In addition to the sound recordings listed on Exhibit A,
7 Copyrighted Recordings also include certain of the sound recordings listed on Exhibit B
8 which are owned by or exclusively licensed to one or more of the Plaintiffs or Plaintiffs'
9 affiliate record labels, and which are subject to valid Certificates of Copyright Registration
10 issued by the Register of Copyrights.

11 13. Among the exclusive rights granted to each Plaintiff under the Copyright Act
12 are the exclusive rights to reproduce the Copyrighted Recordings and to distribute the
13 Copyrighted Recordings to the public.

14 14. Plaintiffs are informed and believe that Defendants, without the permission or
15 consent of Plaintiffs, have used, and continue to use, an online media distribution system to
16 download the Copyrighted Recordings, to distribute the Copyrighted Recordings to the public,
17 and/or to make the Copyrighted Recordings available for distribution to others. In doing so,
18 Defendants have violated Plaintiffs' exclusive rights of reproduction and distribution.
19 Defendants' actions constitute infringement of Plaintiffs' copyrights and exclusive rights
20 under copyright.

21 15. Plaintiffs are informed and believe that Defendants, without the permission or
22 consent of Plaintiffs, have contributorily and/or vicariously infringed Plaintiffs' copyrighted
23 recordings, including but not limited to the extent that one or more members of their
24 household engaged in copyright infringement. Defendants' actions constitute infringements
25 of Plaintiffs' copyrights and exclusive rights under copyright law.
26

1 16. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401
 2 on each respective album cover of each of the sound recordings identified in Exhibit A. These
 3 notices of copyright appeared on published copies of each of the sound recordings identified
 4 in Exhibit A. These published copies were widely available, and each of the published copies
 5 of the sound recordings identified in Exhibit A was accessible by Defendants.

6 17. Plaintiffs are informed and believe that the foregoing acts of infringement have
 7 been willful and intentional, in disregard of and with indifference to the rights of Plaintiffs.

8 18. As a result of Defendants' infringement of Plaintiffs' copyrights and exclusive
 9 rights under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. §
 10 504(c) for Defendants' infringement of each of the Copyrighted Recordings. Plaintiffs further
 11 are entitled to their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

12 19. The conduct of Defendants is causing and, unless enjoined and restrained by
 13 this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be
 14 compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to
 15 17 U.S.C. §§ 502 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendants
 16 from further infringing Plaintiffs' copyrights, and ordering Defendants to destroy all copies of
 17 sound recordings made in violation of Plaintiffs' exclusive rights.

18 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

19 1. For an injunction providing:

20 "Defendants shall be and hereby is enjoined from directly or indirectly
 21 infringing Plaintiffs' rights under federal or state law in the Copyrighted
 22 Recordings and any sound recording, whether now in existence or later
 23 created, that is owned or controlled by Plaintiffs (or any parent, subsidiary,
 24 or affiliate record label of Plaintiffs) ("Plaintiffs' Recordings"), including
 25 without limitation by using the Internet or any online media distribution
 26 system to reproduce (i.e., download) any of Plaintiffs' Recordings, to

1 distribute (i.e., upload) any of Plaintiffs' Recordings, or to make any of
2 Plaintiffs' Recordings available for distribution to the public, except pursuant
3 to a lawful license or with the express authority of Plaintiffs. Defendants
4 also shall destroy all copies of Plaintiffs' Recordings that Defendants have
5 downloaded onto any computer hard drive or server without Plaintiffs'
6 authorization and shall destroy all copies of those downloaded recordings
7 transferred onto any physical medium or device in Defendants' possession,
8 custody, or control."

9 2. For statutory damages for each infringement of each Copyrighted Recording
10 pursuant to 17 U.S.C. Section 504.

11 3. For Plaintiffs' costs in this action.

12 4. For Plaintiffs' reasonable attorneys' fees incurred herein.

13 5. For such other and further relief, either at law or in equity, general or
14 special, to which they may be entitled.

15 DATED this ____ day of _____, 2006:

16 LANE POWELL PC

17
18 By: _____
19 Christian N. Oldham, WSBA No. 14481

20 1420 Fifth Avenue, Suite 4100
21 Seattle, Washington 98101-2338
22 Attorneys for Plaintiffs
23
24
25
26

EXHIBIT A**DAWNELL LEADBETTER AND DONALD LEADBETTER**

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
Capitol Records, Inc.	MC Hammer	Pray	Please Hammer Don't Hurt 'Em	133-683
SONY BMG MUSIC ENTERTAINMENT	Michael Jackson	Dirty Diana	Bad	84-256
Atlantic Recording Corporation	Nu Shooz	I Can't Wait	Poolside	71-124
Interscope Records	No Doubt	Underneath it All	Rock Steady	305-872
BMG Music	Eurythmics	Sweet Dreams (Are Made Of This)	Sweet Dreams (Are Made of This)	46-186
SONY BMG MUSIC ENTERTAINMENT	Ricky Martin	Livin' la Vida Loca	Ricky Martin	278-159
Virgin Records America, Inc.	Steve Winwood	Don't You Know What The Night Can Do?	Roll With It	93-680
Capitol Records, Inc.	Kim Wilde	Kids In America	Kim Wilde	33-474

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general partnership; ATLANTIC
RECORDING CORPORATION, a Delaware
corporation; BMG MUSIC, a New York
general partnership; and VIRGIN RECORDS
AMERICA, INC., a California corporation,

Plaintiffs,

v.

DAWNELL LEADBETTER,

Defendant.

No. CV05-1149P

CERTIFICATION AND NOTICE OF
INTERESTED PARTIES

(Fed. R. Civ. P. 7.1)

1. Pursuant to Federal Rule of Civil Procedure 7.1, the undersigned, counsel of record for Plaintiffs, certifies that the following listed parties have a direct, pecuniary interest in the outcome of the case. These representations are made to enable the Court to evaluate possible disqualification or recusal.

Plaintiff INTERSCOPE RECORDS is a subsidiary of Vivendi Universal, S.A., a publicly held French company.

CERTIFICATION AND NOTICE OF
INTERESTED PARTIES - 1

Case No. CV05-1149MJP (RSL)
707507.0014/1233509.1

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(206) 223-7000

1 Plaintiff CAPITOL RECORDS, INC.'s parent corporation is EMI Group PLC, a
2 company publicly traded in the U.K.

3 Plaintiff SONY BMG MUSIC ENTERTAINMENT is a joint venture owned by
4 USCO Holdings Inc., BeSo Holding LLC, Ariola Eurodisc, Inc., Arista Holding, Inc., and
5 Zomba US Holdings, Inc., none of which is publicly traded. Its ultimate parents are
6 Bertelsmann AG and Sony Corporation, the latter of which is publicly traded in the United
7 States.

8 Plaintiff ATLANTIC RECORDING CORPORATION's ultimate parent corporation is
9 Warner Music Group Corp., which is publicly traded in the U.S.

10 Plaintiff BMG MUSIC is a general partnership owned by SONY BMG MUSIC
11 ENTERTAINMENT and Ariola Eurodisc LLC, neither of which is publicly traded.

12 Plaintiff VIRGIN RECORDS AMERICA, INC.'s parent is EMI Group PLC, which is
13 publicly traded in the U.K.

14 DATED this ____ day of _____, 2006:

15 LANE POWELL PC

16
17 By: _____
18 Christian N. Oldham, WSBA No. 14481

19 1420 Fifth Avenue, Suite 4100
20 Seattle, Washington 98101-2338
21 Attorneys for Plaintiffs
22
23
24
25
26

CERTIFICATION AND NOTICE OF
INTERESTED PARTIES - 2

Case No. CV05-1149MJP (RSL)
707507.0014/1283566.1

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(206) 223-7000

AO 121 (6/90)

TO: Register of Copyrights Copyright Office Library of Congress Washington, D.C. 20559	REPORT ON THE FILING OR DETERMINATION OF AN ACTION OR APPEAL REGARDING A COPYRIGHT
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In compliance with the provisions of 17 U.S.C. 508, you are hereby advised that a court action or appeal has been filed on the following copyright(s):

<input checked="" type="checkbox"/> ACTION ~ APPEAL		COURT NAME AND LOCATION UNITED STATES DISTRICT COURT Western District of Washington William Kenzo Nakamura US Courthouse 1010 Fifth Avenue Seattle, WA 98104
DOCKET NO.	DATE FILED	
PLAINTIFF INTERSCOPE RECORDS; CAPITOL RECORDS, INC.; SONY BMG MUSIC ENTERTAINMENT; ATLANTIC RECORDING CORPORATION; BMG MUSIC; and VIRGIN RECORDS AMERICA, INC.		DEFENDANT DAWNELL LEADBETTER
COPYRIGHT REGISTRATION NO.	TITLE OF WORK	AUTHOR OF WORK
1	<u>See Exhibit A, attached.</u>	
2		
3		
4		
5		

In the above-entitled case, the following copyright(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
COPYRIGHT REGISTRATION NO.	TITLE OF WORK	AUTHOR OF WORK	
1			
2			
3			

In the above-entitled case, a final decision was rendered on the date entered below. A copy of the order or judgment together with the written opinion, if any, of the court is attached:

COPY ATTACHED <input type="checkbox"/> Order <input type="checkbox"/> Judgment	WRITTEN OPINION ATTACHED <input type="checkbox"/> Yes <input type="checkbox"/> No	DATE RENDERED
CLERK	(BY) DEPUTY CLERK	DATE

*U.S.G.P.O. 1982-374-279

Copy 1 – Upon initiation of action, mail this copy to Register of Copyrights.

EXHIBIT A**DAWNELL LEADBETTER AND DONALD LEADBETTER**

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Virgin Records America, Inc.	Steve Winwood	Don't You Know What The Night Can Do?	Roll With It	93-680
Capitol Records, Inc.	Kim Wilde	Kids In America	Kim Wilde	33-474

AO 121 (6/90)

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CLERK	(BY) DEPUTY CLERK	DATE

*U.S.G.P.O. 1982-374-279

Copy 2 – Upon filing of document adding copyright(s), mail this copy to Register of Copyrights.

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AO 121 (6/90)

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*U.S.G.P.O. 1982-374-279

Copy 3 – Upon termination of action, mail this copy to Register of Copyrights.

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CLERK	(BY) DEPUTY CLERK	DATE

*U.S.G.P.O. 1982-374-279

Copy 4 – In the event of an appeal, forward this copy to the Appellate Court so they can prepare a new A0 279 for the appeal.

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In compliance with the provisions of 17 U.S.C. 508, you are hereby advised that a court action or appeal has been filed on the following copyright(s):

<input checked="" type="checkbox"/> ACTION ~ APPEAL		COURT NAME AND LOCATION UNITED STATES DISTRICT COURT Western District of Washington William Kenzo Nakamura US Courthouse 1010 Fifth Avenue Seattle, WA 98104
DOCKET NO.	DATE FILED	
PLAINTIFF INTERSCOPE RECORDS; CAPITOL RECORDS, INC.; SONY BMG MUSIC ENTERTAINMENT; ATLANTIC RECORDING CORPORATION; BMG MUSIC; and VIRGIN RECORDS AMERICA, INC.		DEFENDANT DAWNELL LEADBETTER
COPYRIGHT REGISTRATION NO.	TITLE OF WORK	AUTHOR OF WORK
1	See Exhibit A, attached.	
2		
3		
4		
5		

In the above-entitled case, the following copyright(s) have been included:

DATE INCLUDED	INCLUDED BY			
	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
COPYRIGHT REGISTRATION NO.	TITLE OF WORK		AUTHOR OF WORK	
1				
2				
3				

In the above-entitled case, a final decision was rendered on the date entered below. A copy of the order or judgment together with the written opinion, if any, of the court is attached:

COPY ATTACHED <input type="checkbox"/> Order <input type="checkbox"/> Judgment	WRITTEN OPINION ATTACHED <input type="checkbox"/> Yes <input type="checkbox"/> No	DATE RENDERED
CLERK	(BY) DEPUTY CLERK	DATE

*U.S.G.P.O. 1982-374-279

Copy 5 – Case file copy.

EXHIBIT A**DAWNELL LEADBETTER AND DONALD LEADBETTER**

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
Capitol Records, Inc.	MC Hammer	Pray	Please Hammer Don't Hurt 'Em	133-683
SONY BMG MUSIC ENTERTAINMENT	Michael Jackson	Dirty Diana	Bad	84-256
Atlantic Recording Corporation	Nu Shooz	I Can't Wait	Poolside	71-124
Interscope Records	No Doubt	Underneath it All	Rock Steady	305-872
BMG Music	Eurythmics	Sweet Dreams (Are Made Of This)	Sweet Dreams (Are Made of This)	46-186
SONY BMG MUSIC ENTERTAINMENT	Ricky Martin	Livin' la Vida Loca	Ricky Martin	278-159
Virgin Records America, Inc.	Steve Winwood	Don't You Know What The Night Can Do?	Roll With It	93-680
Capitol Records, Inc.	Kim Wilde	Kids In America	Kim Wilde	33-474